TORTS—CONTRIBUTORY NEGLIGENCE—FAILURE TO VIOLATE STATUTE.—A South Carolina statute (Civ. Code, 1912, sec. 2157; Cr. Code, 1912, sec. 617) required travelers on roads to keep to the right of the center. The plaintiff, driving on the right-hand side of the road, was injured by the defendant proceeding on the same side in the opposite direction. The defence was the plaintiff's contributory negligence in failing to drive to the left to avoid the defendant. *Held,* that the plaintiff was guilty of contributory negligence despite his conformance to the law of the road. Fraser, J., *dissenting.* *Walker v. Lee* (1921, S. C.) 106 S. E. 682.

The decision apparently reaches the unusual result that failure to violate a statute is negligence. As far as can be determined, such a ruling has been applied only to statutes involving road rules. The general tendency is to consider what due care required under the peculiar circumstances. *Parker v. Adams* (1847, Mass.) 12 Metc. 415; *Herdman v. Zwart* (1914) 167 Iowa, 500, 149 N. W. 631.

TRIAL PRACTICE—NEW TRIAL—WHERE EXPERT WITNESS CHANGES MIND.—In an action for malpractice, the plaintiff had proved sufficient negligence to obtain a verdict, but the testimony of an expert witness had been essential. The defendant then moved for a new trial on the grounds of newly discovered evidence and mistake. He offered an affidavit of the plaintiff's expert witness to the effect that the latter had changed his mind and that more mature deliberation convinced him the defendant was not negligent. The plaintiff then offered an affidavit by "one assuredly a expert" to the effect that the evidence given at the trial was correct. *Held,* that a new trial should be granted. *Van Epps v. McKenny* (1921, Sup. Ct.) 189 N. Y. Supp. 910.

It is well settled that the granting of a new trial usually rests in the discretion of the trial court. *Rodan v. St. Louis Transit Co.* (1907) 207 Mo. 392, 105 S. W. 1061. It will not be granted, however, on the grounds of newly discovered evidence unless a different result is probable at the re-trial. *Swan v. Duncan* (1920) 78 Okla. 305, 190 Pac. 678; 29 Cyc. 901, note 59. Newly discovered evidence which is merely impeaching should not be the basis of a new trial. *Blake v. Rhode Island Co.* (1911) 32 R. I. 213, 78 Atl. 834. While in the instant case it is extremely doubtful whether a different result will be reached at the new trial, still the court can not be said to have abused its discretion.

UNFAIR COMPETITION—UNFAIR PRACTICE BY RETAILER.—The defendant was a purchaser from the complainant of a well-known syrup which, when diluted with carbonated water, retailed as a beverage. He weakened the original syrup by additions of water, sugar, and caramel, thereby doubling its volume and causing the drink sold to the public to contain about one-half of the usual amount of the complainant's product. The complainant sought an injunction to prohibit this practice. *Held,* that an injunction should be ordered against mixing the syrup in other than the usual manner unless requested otherwise by the customer. *Coca-Cola Co. v. Brown & Allen* (1921, N. D. Ga.) 274 Fed. 481.

The facts present a new form of unfair trade practice, and lack the requisite of business rivalry to be a clear case of unfair competition. *Sartor v. Schaden* (1904) 125 Iowa, 696, 101 N. W. 511. The law is well settled that one article cannot be delivered by the retailer in substitution of another ordered, without the customer's knowledge. *N. K. Fairbanks Co. v. Dunn* (1903, C. C. N. D. N. Y.) 126 Fed. 227; Nims, *Unfair Competition* (2d ed. 1917) sec. 131. Such a representation would be fraud. *Van Hoboken v. Mohns* (1901, C. C. N. D. Calif.) 112 Fed. 528. The instant case seems correctly decided because the fraud of the defendant threatened injury to the good will of the complainant's business. A threatened invasion of the complainant's property rights is the basis for relief. *Borden's Condensed Milk Co. v. Horlick's Malted Milk Co.* (1913, E. D. Wis.) 206 Fed. 949; Haines, *Efforts to Define Unfair Competition* (1919) 29 YALE LAW JOURNAL, 8, 9, 10.